IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 37 of 2007
With
CIVIL APPLICATION No. 1501 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KALPATARU LAND DEVELOPMENT PVT.LTD.
Versus
JAMNADAS VISHNUBHAI PATEL AND OTHERS

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Appearance :
MR AS VAKIL for Appellant.
MR SN SHELAT, Senior Counsel assisted by MR MTM HAKIM for Respondent No. 1.
None for Respondent Nos.1.2.1, 1.2.2, 1.2.3, 1.2.4,1.2.5 - 2, 2.2.1,2.2.2 - 4, 4.2.1, 4.2.2,4.2.3 - 6, 6.2.1, 6.2.2, 6.2.3, 6.2.4, 6.2.5, 6.2.6, 6.2.7, 6.2.8, 6.2.9, 6.2.10, 6.2.11, 6.2.12,6.2.13 - 8.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 01/02/2007

ORAL JUDGMENT

1) ADMIT. Mr.S.N.Shelat, learned Senior Counsel waives service of admission on behalf of respondent no.8.

2) Mr.A.S.Vakil, learned advocate for the appellant submitted that so far as the present appellant is concerned, he is challenging the order of status quo granted against him and, therefore, it is not necessary to serve other respondents, and he seeks permission to delete the respondents except respondent no.8 at this stage.

3) Permission is granted. Names of the respondents, except respondent no.8, stands deleted from the present proceedings at this stage. With the consent of the parties, this appeal is taken up for final hearing today.

4) The appellant herein is the original defendant no.8 of Special Civil Suit No.388/2006, pending before Principal Civil Judge (S.D.), Surat. Aforesaid suit is filed by present respondent no.8 (original plaintiff) against present appellant and other defendants for declaration and permanent injunction. In the aforesaid suit, the plaintiff-respondent no.8 herein, gave an application at Exh.5 for interim injunction with a prayer that during the pendency of the suit the defendants may be restrained from disturbing the possession of the plaintiff in connection with the suit property and also to restrain the defendants from transferring or alienating the same in any manner.

5) By the impugned order, learned trial Judge granted ad-interim order directing the defendants to maintain status quo till 29-12-2006. It is informed to this Court that the matter is now adjourned to 3rd

February, 2007 before the trial Court. It is the aforesaid order granting status quo which is challenged by the appellant by filing this Appeal from Order under Order 43 of the Civil Procedure Code.

6) Mr.A.S.Vakil, learned advocate for the appellant has vehemently submitted that the learned trial Just should not have granted ad-interim order of status quo and before granting such order, the trial Court should have considered prima facie case and prima facie material. It is submitted by him that the suit is time barred, therefore, before granting order of status quo, the Court should have issued notice, especially when no reasons are given as to why ex-parte ad-interim injunction is required to be granted without notice to other side. Along with appeal memo, the appellant has also produced documentary evidence to substantiate his say that the plaintiff has no prima facie case for getting interim order.

7) On the other hand, Mr.S.N.Shelat, learned Senior Counsel assisted by Mr.M.T.M.Hakim appearing for the respondent no.8 submitted that since the order in question is ex-parte, the trial Court may be directed to decide Exh.5 application at the earliest and that his client, i.e., original plaintiff will not ask for any adjournment, so that Exh.5 application can be decided at the earliest after hearing the concerned parties.

8) I have heard learned counsels appearing for both the sides and I have also considered prima facie material on record. It is no doubt true that normally mandate of Order 39 is required to be followed by issuing notice to other side before granting an ex-parte order of injunction, unless a very very strong case is made out for the same.

10) In the impugned order, which is at page 56, learned trial Judge has observed that, at this stage, she is not passing any order of ex-parte

injunction but passing an order of status-quo. Learned trial Judge has specifically observed in the order that at this stage, it is not possible to decide whether the plaintiff has got any right in the suit property or whether the defendants have right in the property and in that view of the matter, it would be just and proper to direct the defendants to maintain status quo. It is the requirement of law to point out in the order whether any prima facie case is found in favour of the plaintiff, who has applied for injunction. At the time of granting ad-interim injunction without notice to other side, the Court is required to state as to whether any prima facie case is made out by the plaintiff and reasons are required to be stated as to why ex-parte injunction is required to be granted without notice to the other side. On one hand, learned trial Judge has stated that the Court is not granting ad-interim injunction and on the other hand, learned trial Judge has granted status quo. It is required to be borne in mind that status quo is nothing but a sort of injunction and status quo order is required to be granted under Order 39 of Civil Procedure Code. Status quo and injunction stands on same footing and order of status quo is always to be considered as order of injunction. Even though the learned trial Judge has observed that order of injunction is not granted, at the same time, order of status quo is granted. The principle enunciated under Order 39 of Civil Procedure Code is applicable even if the Court is willing to grant status quo on its satisfaction that there is some case for it. It is not the requirement of law that when status quo order is granted, the Court is not required to examine prima facie case.

11) The principle governing injunction as well as status quo, therefore, is on same footing and the learned trial Judges while deciding injunction application are required to keep aforesaid aspect in mind so that no error may be committed by them. In this regard reference is required to be

made to the decision of this Court in **Administrator of Shri Shakti Group, Chandrakant Natverlal Agravat v. Hargovindbhai Shamjibhai** reported in **34 (1) GLR 434**, wherein this Court has held that status quo would also mean injunction and requirement of Rule 3 are required to be fulfilled.

12) Considering the aforesaid aspect of the matter, in my view, learned trial Judge should have either given some prima facie finding for granting ad-interim order or should have issued notice to the other side before granting order of status quo.

13) At this stage, Mr.Shelat, learned Senior Counsel appearing for the respondent no.8 submitted that he has no objection if the order in question is kept in abeyance and the trial Court is directed to decide Exh.5 application after hearing the present appellant. He further submitted that in view of the averments made in this appeal memo in paragraphs 2.18, 2.20 and 2.21, wherein it is stated that an order of status quo is granted even against the present appellant, he has no objection if the order in question is suspended till Exh.5 application is decided.

14) At this stage, this Court is not required to express any opinion on the merits of Exh.5 application. It is needless to say that the trial Court shall decide Exh.5 application on its own merits and as per the evidence available on record and without being influenced by the earlier order, which is impugned in this matter or by this order. Trial Court is directed to dispose of Exh.5 application latest by 20th February, 2007. Till then, ex-parte order granted earlier by the trial Court shall remain suspended and the trial Court may pass appropriate order on Exh.5 application after hearing the parties and in accordance with law. The appellant may file

his reply to Exh.5 application latest by 6th February, 2007 and if the original plaintiff wants to file any rejoinder to such reply, the same may be filed latest by 15th February, 2007 so that Exh.5 application can be decided within the stipulated time. It is once again clarified that this Court has not expressed any opinion on the merits of the case as the matter is pending before the concerned Court. It is clarified that this order is passed only in connection with present appellant as no other defendants have approached this Court.

15) Accordingly, this Appeal from Order is allowed to the aforesaid extent with no order as to costs. Writ to be sent to the trial Court forthwith.

16) In view of above order on main appeal, no order on Civil Application No.1501/2007.

(P.B.Majmudar, J.)

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